

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

D2

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 02 2010

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a corporation that provides information technology (IT) services to business enterprises. To employ the beneficiary in a position that the petitioner designates as a programmer analyst, the petitioner filed this H-1B petition to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on two independent grounds, namely, her determinations that the record of proceeding failed to establish (1) that the proffered position is a specialty occupation, as the petitioner's submissions failed to establish that the petitioner would actually provide the H-1B caliber project-work upon which the petition is based; and (2) that the petitioner would comply with the terms and conditions of employing the beneficiary, as the pay-related records submitted by the petitioner indicate that it has failed to comply with its wage obligations with regard to other H-1B beneficiaries.

On May 8, 2009, former counsel for the petitioner submitted a Form I-290B (Notice of Appeal or Motion) without a brief or evidence.<sup>1</sup> The only comment that former counsel submits about the appeal is the following statement at Part 3 of the Form I-290B, which expresses an intention to provide additional evidence within 30 days:

Within 30 days time, the Petitioner shall provide evidence confirming a bona fide offer of employment to the Beneficiary along with clarification to [sic] the work location as indicated on [the] Form I-129 and will also provide evidence regarding the allegations of terms and conditions of employment violations.

Although former counsel checked box B at section 2 of the Form I-290B, indicating that he would send a brief and/or evidence within 30 days, the AAO has received neither. Accordingly, the record of proceeding is deemed complete as currently constituted.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

Former counsel failed to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. As neither the petitioner nor former counsel presented additional evidence

---

<sup>1</sup> By a letter of withdrawal as counsel dated November 14, 2009 and received by the California Service Center on November 19, 2009, the law firm that had represented the petitioner in this petition notified U.S. Citizenship and Immigration Services that it no longer represents the petitioner in this matter and in 64 other petitions specified in the letter.

on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in this proceeding rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is summarily dismissed.